

Memorandum

(10704)



FRITO-LAY/EAGLE

60-2096-0002

RWF

PENDING

DNK

HALE

PTACEK

DOIDGE

GILLESPIE

FIELD

ROBERTS

CASE

CHRON

ARCHIVE

4/23/98

mek

Subject Recommendation to Close Investigation:
Frito-Lay, Inc.

Date April 23, 1998

60-2096-0002

To Roger W. Fones, Chief
Transportation, Energy and
Agriculture Section

From Nina Hale, Jill Ptacek,
Dick Doidge
Transportation, Energy and
Agriculture Section

I. Background and Summary

We opened this investigation in April 1996, on the strength of complaints from competitors that Frito-Lay, Inc. ("Frito") has exclusive contracts with retailers.

Nevertheless, competitors insisted that Frito was able to obtain sole supplier status in certain types of stores, such as convenience stores. As for other larger retail outlets, competitors claimed that Frito was currently dominating the shelf space, and engaging in constant efforts to obtain additional space, invariably at the expense of, and to the detriment of, its rivals. Competitors claimed that Frito's efforts were driving them out of business because reduced space meant reduced sales and increased costs.

CLOSING AUTHORIZED BY: CKROBINSON/emg: RPDICK/emg: GRSPRATLING/emg

ON: 6/30/98

CAPTIONED MATTER (S) CLOSED: 6/30/98

[REDACTED] (b)(5)
7(D)
As a result, competitors
claimed, Frito would dominate this new product area.

We met with Frito representatives [REDACTED]

[REDACTED] 1410
[REDACTED] We issued a CID to Frito in late
August, [REDACTED] (b)(3)
1314(9)

We recommend closing this investigation [REDACTED] (b)(5)

¹ Because this issue arose after we had opened our preliminary
investigation into shelf space issues, we did not formally seek clearance from the
FTC on this topic.

[REDACTED]

[REDACTED]

[REDACTED]

The most promising of our theories are set forth below. Much credit should be given to Jill Ptacek and Dick Doidge, whose earlier memoranda contain somewhat deeper analysis and cover every possible theory we could come up with, however promising.

II. Theories of Competitive Harm

A. Attempt to Monopolize/Monopolization

[REDACTED]

b(7)(A)

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Exempt under 3, 4, 5 + 7D